

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KATHERINE LOUISE IMMESOTE**  
Claimant

VS.

**WESLEY TOWERS, INC.**  
Respondent

AND

**KANSAS ASSOCIATION OF HOMES  
FOR THE AGING**  
Insurance Carrier

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Docket No. 1,028,633

**ORDER**

Claimant appeals the August 29, 2006 Preliminary Hearing Order of Administrative Law Judge Bruce E. Moore. Claimant was denied benefits after the Administrative Law Judge (ALJ) determined that claimant had failed to submit a timely written claim for accidents alleged on May 8, 2004, and January 11, 2005. The ALJ also determined that claimant had failed to prove that she suffered accidental injury arising out of and in the course of her employment for a series of injuries suffered through claimant's last day with respondent on June 14, 2005, and further found that claimant had failed to provide timely notice of that series of accidents.

**ISSUES**

In her Request For Review, claimant listed the following issue for review: "Whether claimant's injuries were aggravated by repetitive CNA duties."<sup>1</sup>

Claimant acknowledged in her brief to the Workers Compensation Board (Board) that the issues from the first two injuries of May 8, 2004, and January 11, 2005, are not before the Board on this appeal. The only issues on appeal at this time stem from the alleged series of accidents through June 14, 2005. The ALJ, in the Preliminary Hearing Order, found that claimant failed to prove that she suffered accidental injury arising out of and in the course of her employment with respondent and failed to provide timely notice

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<sup>1</sup> Claimant's Request For Review at 1 (filed Sept. 6, 2006).

of that alleged series of accidents. Claimant discusses the written claim statute in her brief to the Board, and the ALJ, in the Order, also discusses the written claim defense, but the ALJ does not make a finding with regard to the timeliness of claimant's written claim for the June 14, 2005 alleged injuries. The Board will, therefore, limit its review in this matter to whether claimant suffered accidental injury arising out of and in the course of her employment with respondent through a series of microtraumas, ending on June 14, 2005, and whether claimant gave timely notice of those accidents.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the undersigned Board Member concludes the Preliminary Hearing Order should be affirmed.

Claimant worked as an LPN for respondent at Wesley Towers, a nursing and retirement home. This job required claimant participate in the daily care of multiple patients. Claimant alleges that the job required lifting up to 60 pounds on a regular basis. Respondent's representative, Wilma Fast, the nursing coordinator, testified that respondent's facility was a "no lift" facility, with little lifting required.<sup>2</sup>

Claimant had a history of injuries while working with respondent. She suffered injuries to her middle and low back on May 8, 2004, while pushing a medication cart. A "Report By Injured Employee" was prepared by claimant, and signed and dated May 10, 2004. Claimant was provided medical care with respondent's authorized medical provider after that incident. Claimant suffered another injury on January 11, 2005, when she fell on ice in respondent's parking lot. A "Report By Injured Employee" was prepared on January 12, 2005, and again, claimant was provided authorized medical treatment.

Claimant now alleges a series of accidental injuries through claimant's last day with respondent, June 14, 2005. Claimant testified that she had several conversations with Ms. Fast regarding her back problems and their connection to her job duties with respondent. Ms. Fast denies any such conversations took place. Ms. Fast does admit that claimant complained of back pain. But when Ms. Fast inquired as to the cause, claimant told her that claimant's daughter had been in an auto accident, and claimant was in charge of her daily care. This included having to regularly lift the daughter at home.

Ms. Fast testified that respondent's employees were trained to report all injuries, including repeat trauma injuries suffered on the job. Claimant acknowledged that she was advised regarding respondent's policy on reporting work-related injuries.

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<sup>2</sup> P.H. Trans. at 63.

Claimant testified that she wrote a note to Ms. Fast in May 2005, requesting medical treatment. Claimant failed to keep a copy of the note and acknowledged that the note did not allege her ongoing back problems were work related. Ms. Fast denies receiving such a note. Also, claimant was unable to explain why she did not prepare a "Report By Inured Employee" for the series through June 14, 2005, as she did after the first two injuries.

The ALJ, in a lengthy Order, discussed in detail claimant's allegations and the credibility of claimant's testimony regarding those allegations. He found:

In the final analysis, Claimant's credibility (or lack thereof) undermines her claim that she suffered or reported claimed injuries through repetitive work activities through her last day worked.<sup>3</sup>

This Board Member agrees and affirms the denial of benefits in this matter.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>4</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2004 Supp. 44-551(b)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, it is the finding, decision, and order of this Appeals Board Member that the Preliminary Hearing Order of Administrative Law Judge Bruce E. Moore dated August 29, 2006, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2006.

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BOARD MEMBER

c: Brian D. Pistotnik, Attorney for Claimant  
Michael L. Entz, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge

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<sup>3</sup> Preliminary Hearing Order (Aug. 29, 2006) at 7.

<sup>4</sup> K.S.A. 44-534a.